

ORDERS IN BANKRUPTCY

FOR THE

DISTRICT OF MONTREAL.

RULES AND ORDERS

AND

TARIFF OF FEES,

MADE BY THE CIRCUIT JUDGES OF THE DISTRICT
OF MONTREAL,

Under and by virtue of the Statute 9th Victoria, chap. 30, sec.
37, intituled "*An Act to continue and amend the Bankrupt
Laws now in force in this Province.*"

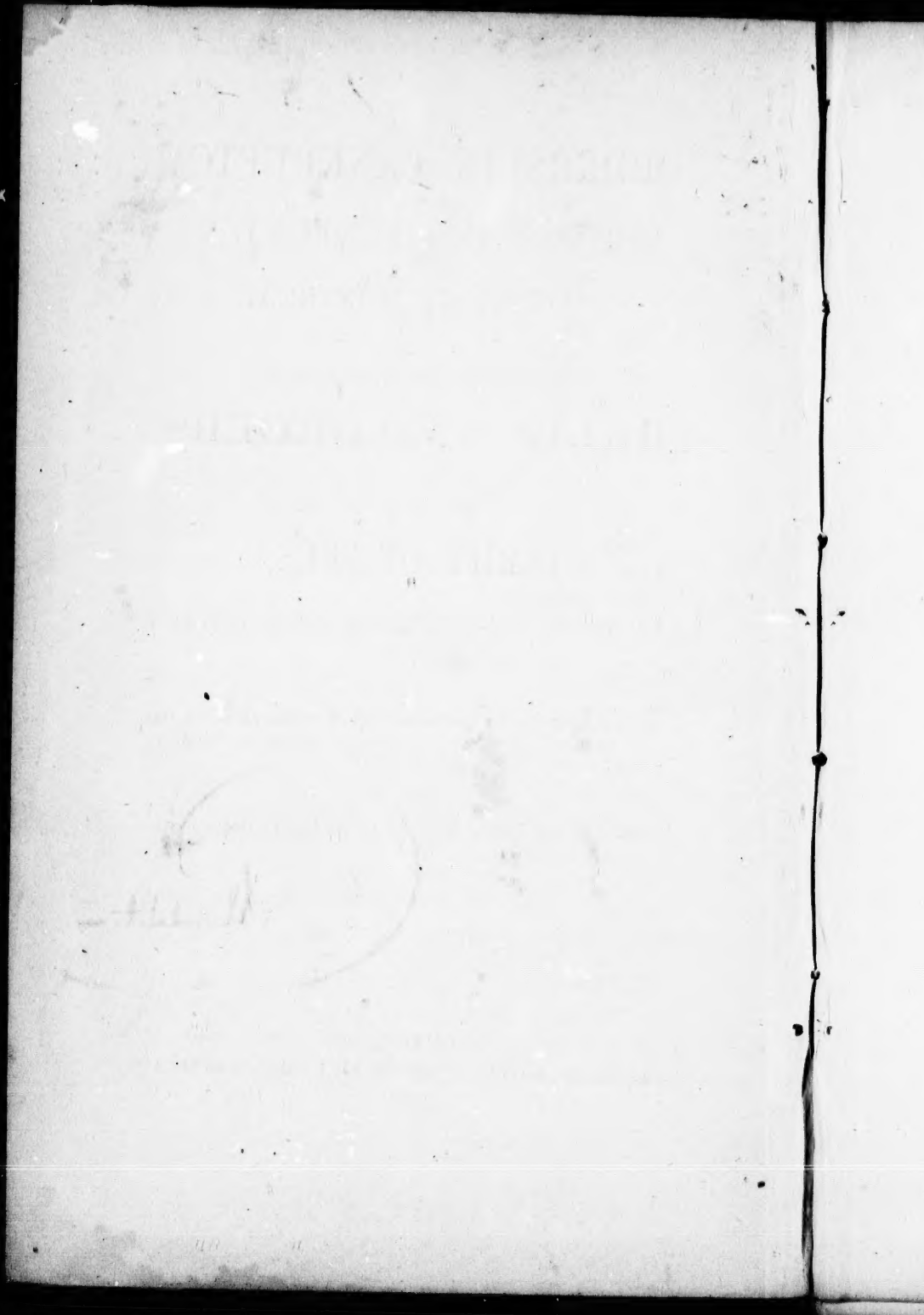
AND

Confirmed by the Judges of the Court of Queen's Bench on the
Eighth day of October, 1846.

Mondet

MONTREAL:

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1846.



ORDERS IN BANKRUPTCY

FOR THE

DISTRICT OF MONTREAL.

RULES AND ORDERS and TARIFF OF FEES made by the Circuit Judges of the District of Montreal, under and by virtue of the Statute 9th Victoria, chap. 30, sec. 37, intituled "*An Act to continue and amend the Bankrupt Laws now in force in this Province.*"

I. It is ordered, That the Clerk's Office for proceedings in Bankruptcy shall be held in the Court House in the City of Montreal, and shall be kept open daily, Sundays and the Holidays hereinafter mentioned excepted, from nine A. M. to four P. M. in the months from March to September both inclusive, and from ten A. M. to four P. M. in the other months of the year.

II. That the several days following shall be held to be Holidays in which no proceedings in Bankruptcy shall be had, and the Clerk's Office shall not be open, viz:—The Circumcision, Epiphany, An-

nunciation, Ascension, Good Friday, Her Majesty's Birth Day, Pentecost, Corpus Christi, or Fête Dieu, St. Peter and St. Paul, Assumption, All Saints, Conception, and Christmas Day.

III. That the sittings of the Court in Bankruptcy shall commence at ten A. M.

IV. To insure regularity of proceedings at the sittings of the Court, Summonses returned shall first be called, then Petitions and Summary Proceedings shall be heard, and lastly Commissions and the meetings under them, appointed to be held, shall be proceeded with.

V. Proceedings in Bankruptcy may be conducted by the Bankrupt or the party having interest therein, in person, or when not thereto prevented by the requirements of the said Acts in relation to Bankruptcy, by his duly constituted Attorney *ad negotia* or by an Attorney *ad litem*, who shall be an admitted Attorney authorized to practice in the Courts of Queen's Bench for that part of this Province heretofore Lower Canada; but the said Attorneys shall not be allowed to appear, nor be heard in any case until the appointment of the former duly proved, or an appearance in writing under the signature of the latter, shall have been filed in the Record of Proceedings in the case.

VI. All written Applications, Petitions, Depositions, and other papers in Bankruptcy, required to be filed

in any case, must be plainly written, without interlineations or abbreviations of words; and the names of the applicant, petitioner or mover in the matter, or his Attorney, must be subscribed in full thereto.

VII. That every application for a Commission of Bankruptcy shall be by Petition addressed to the said Circuit Judges, which shall set forth clearly and precisely, the names, residence and occupation of the creditor or creditors applying for such Commission, and of the debtor or debtors, Defendant or Defendants, the place of business of the latter at the time of the alleged bankruptcy, the nature and amount of the debt or debts due to such creditor or creditors; how and for what consideration the same arose, and the particular time or times the same accrued due when due; and all acts of Bankruptcy committed by the person or persons against whom such Commission is prayed, and by which it is intended to prove the Bankruptcy.

VIII. Any party having objection to make to the granting of a petition made by any Bankrupt or other person in interest in the case, and applying to shew cause against such Petition, must file a brief statement in writing of the grounds of objection, which, if filed at the time appointed for the hearing of the Petition, shall be a sufficient notice thereof to the said petitioner, otherwise the said objection shall not be heard.

IX. All objections to Claims made in any

case shall be in writing, the grounds of objection thereto being briefly set out, and shall be filed at the time appointed for proof of debts in the case, unless the Court shall at any time thereafter see fit to admit the filing of the said objection, upon good cause shewn, supported by affidavit.

X. Whenever in cases not specially provided for by the said Acts, a particular time is or shall be prescribed by the Court sitting in Bankruptcy or by the Rules of the Court, for notice to be given of any petition, application, or any other proceeding in Bankruptcy, the Court may, in its discretion, for good cause shewn upon affidavit, enlarge or lessen or vary the time, whenever the rights of the creditors or other parties interested may, in the opinion of the Court, seem to require it for the purposes of Justice.

XI. In all cases in which any particular number of days is prescribed or shall be mentioned in these Rules and Orders or in any other Rule or Order of the Court, for the doing of any Act, the same shall be reckoned exclusive of the first and the last day, and when the last day shall happen to fall on a Sunday or Holiday, the time shall then be reckoned exclusive of that day also.

XII. The Clerk shall prepare and keep a Docket in which shall be entered the proceedings in Bankruptcy in all cases, with their respective dates as they occur and with reference by appropriate numbers

to all fyles, and documents exhibited or used therein; and shall also keep suitable Registers, into which shall be fairly transcribed the Docket proceedings of each case; and such Register shall be preserved by the Clerk as the record of all proceedings in the case.

XIII. The Clerk shall prepare for the Court a Calendar of Causes pending in Bankruptcy, and shall enter therein, from day to day, a list of the cases or matters ready or fixed for hearing on that day, following the priority of Orders on the Docket.

XIV. The Bankrupt shall, three days at least before the day appointed for the Second General Meeting of his creditors, or the adjournment thereof for that purpose, cause to be fyled in the Record of Proceedings in the case, a balance-sheet or general statement of his affairs made up to the date of the Commission issued against him, and the last examination of the Bankrupt shall in no case be passed by the Court unless the said balance-sheet or general statement shall have been so fyled.

XV. So soon as an Assignee shall have duly signified his acceptance of the office, the Clerk shall, forthwith, cause to be delivered to him or to his Attorney, a duplicate of the instrument required to be made in that behalf, together with the requisite Order or Process of the Court, to put him in possession of the Estate of the Bankrupt, and the Deeds, Books of Account and papers relating thereto.

XVI. That the said Assignee shall forthwith, after receiving the said Estate, sort and number the said Deeds, Books of Account and papers, and enter them in a Register Estate Book, to be by him kept for the said Estate, and a list thereof shall be by him made and delivered to the Clerk of the Court, to be fyled in the Record of Proceedings in the case.

XVII. That the Assignee shall, on receipt of any monies for the Bankrupt Estate, immediately deposit the same in some chartered Bank in this City, in which he shall be held to keep an account exclusively for the Estate, in his name as Assignee thereof, and the Assignee shall, once in every month, deliver to the Court an account of the Estate made up to the last day of the preceding month, and shall therewith exhibit his Cash Book and Bank Pass-book, and any other book that the Court may require, in explanation or support of the said account, and such account shall be affirmed by the oath of the Assignee, and shall show the balance of the Estate then in the hands or under the power or control of the said Assignee; and no monies so deposited shall be withdrawn without an Order of Distribution or dividend of the Estate, or a special order in the case first entered on the Docket of Proceedings, the reason or occasion whereof in writing shall be stated by the Assignee, and shall be fyled and numbered by the Clerk at the time of entering the Order.

XVIII. Before the Assignee satisfies or discharges any mortgage, hypothèque, conditional contract,

pledge or lien of or upon any part of the estate of the Bankrupt, or shall compound any debt owing to or by the Bankrupt under the authority of the said Act, he shall cause to be fyled in the Record of the Proceedings, his report of the facts and circumstances of the matter, and obtain from the Court and have entered on the Docket, the proper orders therefor.

XIX. That all services not specially provided for by the said Acts or by these Rules, shall be made two days at the least before the expiration of the time for the return of the petition or proceeding ordered to be served.

XX. That on the day appointed for the First Meeting of Creditors of the Bankrupt, the Sheriff charged with the Commission of Bankruptcy shall return the same to the Clerk of the Court, to be fyled of record, together with a copy of the inventory made by him to be delivered to the Assignee, and a copy of each Newspaper, including the *Canada Gazette*, in which the First Meeting of the Creditors of the Bankrupt shall have been ordered to be advertised.

XXI. That all Petitions presented to the said Judges, for the attendance of any party or parties, and the Fiat directing such attendance thereon, shall, when, served be returned and fyled of record in the case on or before the hearing of the same.

XXII. That all claims to or upon any real estate of the Bankrupt, shall be by Petition to the Court

setting forth the nature and the particulars of such claim, whereupon a time shall be appointed for the hearing of the same, after due notice to all parties interested and on proof of service of said notice the Court shall proceed to hear and determine the said Petition.

XXIII. That, in all cases, the particulars of the demand and notice under the aforesaid Act 7 Vic. cap. 10. specified in Schedule A. (No. 2), shall be signed by the Creditor, specifying his name and surname, his place of residence or business, or in cases where the debt demanded is claimed to be due to a partnership firm, be signed by or in the name of one of the partner or partners, adding after such signature the style or firm of partnership and place of business as follows (that is to say): John Thompson, for self and partners, trading under the style or firm of—— at —— . And in all cases where an affidavit is made by the duly accredited and appointed Agent or Attorney of any Creditor or Creditors, for the purposes of obtaining a summons calling upon a trader to appear according to the provisions of the aforesaid Act, the said affidavit shall state that the person making the same is acquainted with the handwriting of the person or persons, if more than one, purporting to sign the said particulars of demand and notice, and that he verily believes the signature to the said particulars and notice is of the proper handwriting of such person or persons.

XXIV. Such particulars and notice shall be directed to the party or parties intended to be summoned, by the name and surname of each of them, and by the place of residence, and shall also contain, in the body thereof, a statement of the name or names of all the persons from whom the debt is claimed to be due, whether the whole of them shall be summoned or not; or, in case of partners, the style or firm of partnership and place of business, in the same form as mentioned in the last Rule.

XXV. The account in such particulars of demand shall be expressed with reasonable and convenient certainty as to dates and all other matters, and when credit is given in such account to the debtor the notice shall require payment of the difference or balance only which appears to be due on such account.

XXVI. If the affidavit for summoning a debtor under the said Act shall not be filed, in case the Plaintiff (*or creditor*) reside in this Province, within one calendar month, or in case the Plaintiff (*or creditor*) reside elsewhere than in this Province, within three calendar months after service of the particulars of demand and notice, the Plaintiff (*or creditor*) shall not afterwards be at liberty to proceed without serving new particulars of demand and notice.

XXVII. Every affidavit made under the said Act shall be intituled,

“ In the Court of Bankruptcy,
For the District of Montreal.”

XXVIII. Every affidavit for summoning a Debtor under the said Act shall state the nature of the debt with the same degree of certainty and precision as is required in an affidavit to hold to bail in the Court of Queen's Bench.

XXIX. Every Summons of a debtor under the said Act shall describe the parties in the same manner as they were described in the particulars of demand and notice, and shall be served four days at least, before the time for such appearance mentioned in the said Summons and every Summons shall be served between sunrise and sunset, on any day not being Sunday or one of the Holidays above mentioned; and if such service shall be made on any other day or time of the day than the foregoing, the same shall be ineffectual and void to all intents and purposes whatever.

XXX. If the Plaintiff (*creditor*) shall make default in appearance at the time appointed in that behalf, the Defendant (*debtor*) shall be entitled to his discharge from the Summons, and a memorandum of such discharge shall be endorsed on the Summons.

XXXI. If the Defendant shall appear at the time appointed in that behalf, and shall refuse to admit such demand, but shall, as to the whole of the said demand, or part of it, make a deposition on oath in the form required by the said Act, that he believes he has a good defence to the same, the

Defendant shall be entitled to his discharge from the Summons, and a memorandum of such discharge shall be indorsed on the Summons, upon entering into a bond as provided by the said Statutes.

XXXII. Any want of compliance on the part of the Plaintiff with these Rules and Orders, in the particulars of demand and notice, and in the affidavit for summoning the Defendant, and in the Summons and service thereof, or in any or either of such matters, shall be *à peine de nullité*.

XXXIII. Every application to enlarge the time for calling on the Defendant to state whether or not he admits the demand or any part thereof, or for entering into a Bond with sureties, shall be supported by affidavit.

XXXIV. Before any Defendant shall be allowed to enter into a Bond, with sureties, according to the provisions of the said Act, he shall give to the Plaintiff or his Attorney a notice in writing, signed by the Defendant or his Attorney, of the Defendant's intention so to proceed.

XXXV. Such notice of sureties shall be accompanied with a true copy of the affidavit of sufficiency, which affidavit shall be in the following form, viz:—

“In the Court of Bankruptcy,
For the District of——
Between—— Plaintiff,
and
Defendant.

A. B., of ——— in the &c. ——— and C. D.,
of &c. ———

(adding their places of residence respectively according to the particulars set forth in Rule No. 1,) severally make oath and say; and, first, the said A. B., for himself, saith that he is one of the proposed sureties for the above named Defendant, and that he, the said A. B., resides at ———aforesaid, and that he is worth property in this Province to the amount of £—— over and above what will pay and satisfy all his just debts and incumbrances; that he is not surety in any manner for the above named Defendant, or any other person, except on the present occasion, (or if he is surety on any other occasion substitute for the words underlined the following, and every other sum for which he is now surety.)

And the said C. D., for himself, saith that, (here pursue the same form as with respect to the former surety.

XXXVI. The amount of property so sworn to shall be the sum demanded, fractional parts of a pound excepted, and one-half more.

XXXVII. The Plaintiff shall be at liberty, within two days after service of notice of sureties, to except to the proposed sureties or either of them, by delivering a written notice to the Defendant or his Attorney, to the effect generally that he excepts to such surety (or sureties, as the case may be).

XXXVIII. When any such notice of excep-

tion has been served, the Defendant shall then be at liberty to apply to the Judge for an appointment to be signed by him of a time and place when and where the said Judge will attend for the purpose of hearing the parties, and at such time and place the Defendant or his Attorney shall attend with the bond, duly prepared together with the affidavit of sufficiency of the sureties; and the Plaintiff or his Attorney shall be at liberty to oppose the sureties, or either of them, upon affidavit, on the ground of any defect appearing on the face of the proceedings.

XXXIX. The bond shall be taken in a penal sum, to be the amount of double the sum demanded, and shall be executed by the Defendant and both sureties to the Plaintiff, and the form of the condition shall be as follows, that is to say :—

Whereas the said ——— (Plaintiff,) and one C. D., by their affidavit sworn and filed with ——— Esquire, one of the Circuit Judges for the District of Montreal on the ——— day of ——— 184— according to an Act passed in the seventh year of the Reign of Queen Victoria, intituled 'An Act to repeal an Ordinance of Lower Canada, intituled 'An Ordinance concerning Bankrupts, and the administration and distribution of their Estate and Effects,' and to make provision for the same object throughout the Province of Canada,' amended and continued by the Act passed in the ninth year of the Reign of Queen Victoria, intituled 'An Act to continue and amend the Bankrupts laws now in force in this Province,' severally deposed as follows, that is to say: the deponent, (Plaintiff,) for himself, said, (*here set forth the affidavit for summons*). And whereas the said Judge did, upon the filing of such affidavit, issue a Summons according to the said Act which was duly served on the said (Defendant,) on the ——— day of ——— in the year 184—. And whereas the said (Defendant,) upon

his appearance to the said summons (or at an enlargement or adjournment of the said Summons, *as the case may be*), refused to admit such demand, and made no deposition, according to the said Acts, that he believed he had a good defence to such demand (or signed an admission for part only of such demand, the sum of £— and did not make a deposition, according to the said Acts that he believed he had a good defence to the residue of such demand) (or in case the said Defendant shall not appear at the return of the said Summons, then.) And whereas the said Defendant did not appear to the said summons at the time appointed, having no lawful impediment, made known to, and allowed at the said time by, the said Judge. And whereas the said (Defendant,) has requested the said (sur) as sureties for him, to join in the present obligation conditioned as inafter appearing, to which they have consented; and the said (Defendant,) has given notice thereof to the said (Plaintiff). And whereas the said Plaintiff hath brought an action at law for recovery of the said demand (or of the residue of the said demand, as the case may be); now the condition of the above written obligation is such that if the said (Defendant,) his executors or administrators, shall pay such sum or sums to the said (Plaintiff,) his executors, administrators or assigns, as shall be recovered in the said action or any other action which may have been brought, or shall hereafter be brought, for the recovery of the said demand (or the residue of the said demand, *as the case may be*), together with such costs as shall be given in the same, then the present obligation shall be void, otherwise shall be and remain in full force and virtue.”

Note.—If no action be brought, omit the part underlined.

XL. Where no notice of exception is served, the Defendant or his Attorney may attend before the Judge on the second day after service of notice of sureties, with the bond, affidavit of execution aforesaid and affidavit of sufficiency of the sureties, and also with an affidavit of the service of notice of sureties and that no notice of exception has been served, and file the same respectively.

XLI. In every case when the Defendant shall make the deposition provided for by the said Act,

6 Vict. cap. 10. and either the Plaintiff or Defendant shall desire to have the matter determined by an arbitration, the party desiring such arbitration shall give notice to the other party of such his intention, and upon production of such notice, with an affidavit of the service thereof upon the party or his Attorney, the Judge shall appoint a time and place when and where he will hear the parties upon a nomination of Arbitrators between the said parties, to arbitrate and award upon the said matters, and the party obtaining such appointment shall serve a copy thereof upon the opposite party at least twenty-four hours before the time appointed.

XLII. At the time appointed for the nomination of Arbitrators, the parties shall attend by themselves or by their Attorneys, before the Judge, and the said Judge shall name an Arbitrator, and the said party applying for such arbitration shall next proceed to nominate a second Arbitrator, and then the Creditor shall name a third Arbitrator; and if either of the said parties shall not attend at the time appointed for that purpose, or shall neglect or refuse to name an Arbitrator, then the said Judge or, upon proof of the due service of a copy of his appointment, or upon production of the copy served upon the party, shall name an Arbitrator on behalf of such party not attending, or neglecting or refusing to name an Arbitrator as aforesaid.

XLIII. After such nomination, as provided for

by the last Rule, shall have taken place, a memorandum or minute of such nomination shall be furnished to the party making the application, or in case he should be the person not attending, or neglecting or refusing to name an Arbitrator, then to the opposite party, and at the foot of said minute the said Arbitrators shall sign a memorandum of acceptance, which such party shall procure in the form following:—

"We, whose names are above mentioned as being nominated Arbitrators between the above parties, do hereby accept of such nomination."

And such memorandum or minute, together with such acceptance, shall be filed with the Clerk of the Court, and thereupon a Certificate shall be given of such nomination and acceptance in the following form:—

"In the Court of Bankruptcy,

For the District of ———

I, the undersigned, being one of the Circuit Judges for the District of Montreal, do hereby certify that A. B., of, &c., and C. D., of, &c., and E. F., of, &c., have been duly chosen and appointed Arbitrators under and in pursuance of the provisions of the Statutes now in force relating to Bankrupts, to arbitrate and award between — and — in respect of the matters contained in the particulars of demand annexed to the affidavit and notice filed with me, according to the said Statutes, and I hereby declare that the said Arbitrators have accepted of such choice and appointment.

Given under my hand at ——— this
—— day of ——— in the year of
Our Lord, 184—.

XLIV. In case any of the said Arbitrators so nominated at the time appointed for that purpose, shall decline to accept, or refuse to act, and

upon the same being made known to the said Judge, he shall then appoint another time and place in manner as provided for in Rule 42, to proceed to nominate another Arbitrator or Arbitrators in place of such person or persons so declining to accept, or refusing to act, and the like proceedings thereupon, and to perfect such choice and appointment, shall take place and be had as provided under the preceding Rules, in relation thereto.

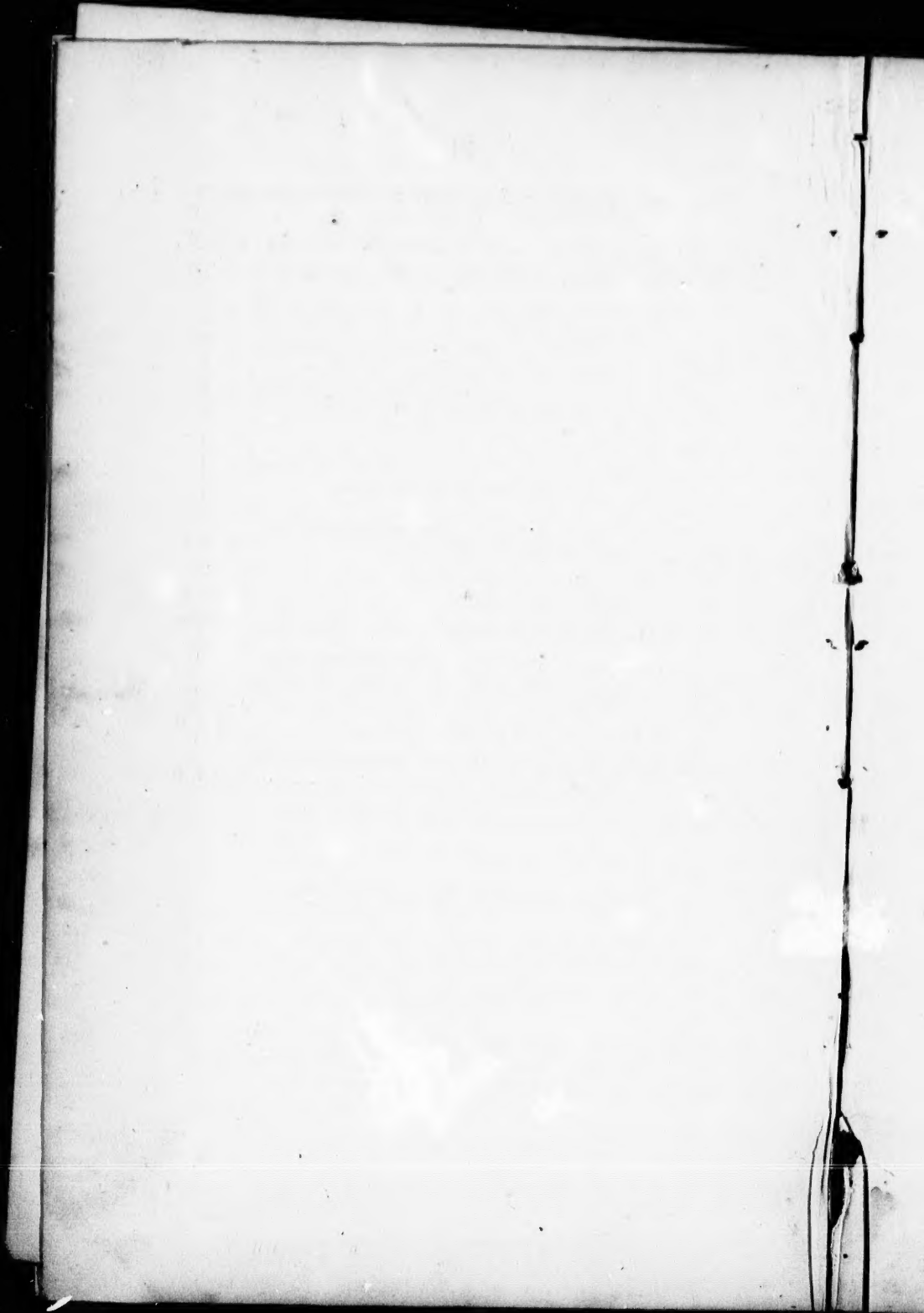
XLV. The award to be made by the said Arbitrators shall be made and filed with the Clerk of the Court, together with an affidavit of the due execution thereof, within such time from the date of the Certificate of the appointment of Arbitrators as aforesaid as shall be indorsed upon the said Certificate, or within such further time as the said Judge shall appoint.

TARIFF

TARIFF OF FEES IN BANKRUPTCY.

		<i>For the Solicitor or Attorney.</i>		
		£	s.	D.
No. 1	For drawing and filing each claim,.....	0	11	8
2	For claims on Real Estate in the nature of an opposition <i>afin de conserver</i> , if not contested,...	1	3	4
3	If same be contested,.....	2	10	0
4	For same on oppositions <i>afin d'annuller, distraire et afin de charge</i> , if not contested,.....	2	10	0
5	If same be contested,.....	5	0	0
6	To the same for issue and proceedings on summons only till close thereof, without arbitration,	2	10	0
7	If arbitration be had, an additional,.....	0	11	0
8	For all proceedings for, and obtaining the Commission, to return of same,.....	2	10	0
9	To the Solicitor for conducting the proceedings to granting of Certificate,.....	3	10	0
10	Allowance for extra services to be subject to the discretion of the Judge,.....			
		<i>For the Sheriff.</i>		
1	For each Commission delivered to him, and Return thereof,.....	1	5	0
2	All actual disbursements for advertising, all disbursements for taking charge of the estate until delivered to the Assignee to be subject to the discretion of the Judge,.....			
3	All services of Summons Orders or Rules,.....	0	2	6
4	Mileage in all cases, for each league distance from the Court House, out and in,.....	0	2	6

		£	s.	d.
No. 5	For each day's seizure under the Commission of Bankruptcy,.....	0	15	0
6	For taking Inventory of the Estate, and Copy,	0	10	0
7	For executing every Warrant of Attachment,...	0	5	0
8	Poundage.—One per cent on the proceeds of Personal Estate received by the Sheriff amounting to £1,000, and on such proceeds exceeding £1,000, poundage of 1½ per cent provided such last poundage do not exceed £20, Cy., the said poundage payable to the sheriff as the Estate shall be realized,.....			
<i>To the Clerk of the Bankrupt Court, his fees as specially allowed by the Statute.</i>				
1	For copies of papers when required or necessary, per folio of 100 words,.....	0	0	6
2	For every List of Debts proved at several meetings,.....	0	2	6
3	For Record of proceedings in cases of Summonses,	0	10	0
4	For Record and Register of Proceeding, on each Commission, subject to the discretion of the Judge,			
5	For every Writ of Attachment,.....	0	5	0
6	For drawing each Order of Distribution or Dividend,.....	1	5	0



RULE FOR THE COURT OF REVIEW.

All applications to the Court of Review whether for appeal from any Order or Judgment of the Court of Bankruptcy, or for or against the allowance or confirmation of the Certificate of Discharge, shall, in every case, be in writing by Summary Petition, setting forth the special grounds of appeal, or application or objection, as the case may be; nor shall any Petition against the allowance of a Certificate be allowed to be received or heard, unless the same be affirmed by the oath of the Petitioner or his Attorney, and accompanied with affidavits in support thereof; which said Petition and affidavits shall be fyled in the Office of the Prothonotary of the Court of Review, four days before the day advertised for the application of the allowance of Certificate, which said fying shall be sufficient notice to the Bankrupt applying for the said allowance: and no Petition shall be received against the allowance of such Certificate, unless the said Petition and affidavits in support thereof be so fyled, in default whereof such certificate shall be forthwith allowed and confirmed on application therefor. Unless the said Court of Review shall otherwise order on sufficient cause shewn supported by affidavits.

FEES FOR COURT OF REVIEW.

		<i>To the Solicitor of Bankrupt.</i>		
No. 1	To the same for obtaining allowance of Certificate in Court of Review, if not contested,...	£	s.	d.
		3	10	0
2	If the same be contested, an additional,.....	2	10	0
		<i>To the Prothonotaries.</i>		
3	For each allowance of Certificate in Court of Review on filing petition thereof,.....	1	5	0